

NH DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE DIRECTIVE	CHAPTER <u>Enforcement Operations</u> STATEMENT NUMBER <u>5.13</u>
SUBJECT: ANNULMENT/PARDON INVESTIGATIONS	EFFECTIVE DATE <u>05/15/03</u> REVIEW DATE <u>04/15/04</u> SUPERCEDES PPD# <u>5.13</u> DATED <u>07/15/02</u>
ISSUING OFFICER: <u>Phil Stanley Commissioner</u>	DIRECTOR'S INITIALS _____ APPENDIX ATTACHED: YES _____ NO _____
REFERENCE NO: See reference section on last page of PPD.	

I. **PURPOSE:**

To provide the sentencing court/ Attorney General's Office with a report concerning any State or Federal convictions, arrests or prosecutions of the petitioner and any other information that may be relevant in assisting the authority charged with making a determination on the petition. The report shall include updated record checks, an indication as to compliance with the sentencing order and a recommendation as to the suitability of the request.

II. **APPLICABILITY:**

All staff within the Department of Corrections, particularly the Offender Records Office and the Division of Field Services.

III. **POLICY:**

In accordance with RSA 651:5 (Attachment 1) it is the policy of the Department of Corrections to conduct annulment investigations as assigned by the Court. Criteria for eligibility is listed under Disposition of Certain Records, (RSA 651:5). In accordance with RSA 4:22 (Attachment 2), the Department of Corrections shall conduct pardon investigations as assigned by the New Hampshire Office of the Attorney General. It is the policy that both annulment and pardon investigations be completed and filed with the appropriate authority within 60 days of receipt.

IV. **PROCEDURES:**

A. Annulment Investigations - Division of Field Services

1. The assigned PPO/Case Technician should forward a letter (Attachment 3) to the petitioner advising of the required investigation and the need for a written response. The letter should indicate that in accordance with RSA 159:1, laws of 1991, that the Department of Corrections shall charge the applicant a \$100.00 annulment fee. No further investigation efforts should be made until the fee is received or waived.
2. The investigation format shall consist of the following categories (see attachment 4)
 - a. Court - Sentencing authority in the instant offense.
 - b. Docket Number.
 - c. Petitioner's name and date of birth.
 - d. Offense(s) cited in the petition and plea.
 - e. Date of conviction, Sentencing Judge.
 - f. Disposition Order made in the cited case.

- g. Record checks - List all states/types checked and attach copies. (Certain records may require a written explanation of codes).
 - h. Compliance with court ordered conditions (No responses will require a written explanation as "J").
 - i. Compliance with NH RSA 651:5 (No responses will require a written explanation as "J").
 - j. Explanations (if needed).
 - k. Recommendation to Annul (yes or no).
 - l. Sources - All sources used in completing the report shall be listed. The petitioner's written response will be attached to the report.
3. The investigating PPO/Case Technician shall verify all of the information on the form.
 4. The statutory standard used to determine whether or not a petition should be granted is whether "The Annulment will assist in the petitioner's rehabilitation and will be consistent with the public welfare."
 5. If no response is received from the petitioner, the investigating PPO/Case Technician shall notify the Court that a report cannot be completed. The notification should recommend that the petition be denied/dismissed without prejudice. (Attachment 5)
 6. Persons having been convicted of a misdemeanor prior to 1/1/95 have the option of applying under statutes in effect at the time of sentencing.
 7. The investigating PPO/Case Technician must be aware that statutes have established special annulment criteria for certain offenses which may differ from the criteria set forth in RSA 651:5.
 8. Annulment Fee Collection:
 - a. Annulment fees are to be paid in full prior to the initiation of the investigation. Partial payments are not authorized. Payments may be made by check or money order. The collection fee charge shall not be applied to annulment fees. The current fee is \$100.00.
 - b. Upon payment of the required fee, a receipt is issued to the applicant and marked "annulment fee" in the "other" section of the receipt ticket.
 - c. Should the applicant claim indigence, the assigned PPO/Case Technician shall require the applicant to complete a financial affidavit. Upon review and verification of the information contained therein, the PPO shall determine whether or not the applicant has the ability to pay the fee. Fee waiver recommendations are reviewed and signed off by the Chief PPO.
 - d. A separate remittance slip is not required, nor is a ledger card. However, an annulment fee log will be set up to include the offenders name, client ID# and date paid.
 - e. In the event a check is received and returned for "insufficient funds," the applicant shall be advised that the results of the investigation will not be forwarded to the court until full payment has been received.
 - f. The fee is waived for the annulment of an arrest where there was no finding of guilt made.
- B. Pardon Investigations
1. All requests for pardon investigations, as required in RSA 4:22, shall be forwarded from the Attorney General's Office to the Department of Corrections.
 2. Requests for pardon investigations and/or synopses will be forwarded to the appropriate district offices or in the case of an inmate to Offender Records. The Offender Records office will return the completed synopsis to the Commissioner's Office.
 3. For parolees, the District Office will have the assigned PPO forward a letter to the petitioner advising them of the required investigation and arrange for an interview.
 4. The investigation format shall consist of the following categories:
 - a. Offense
Statement describing the original offense to include the date the offense occurred, the sentencing court and any other relevant information.
 - b. Level of Compliance
The PPO should determine if the petitioner has fulfilled all the obligations/conditions and financial requirements of the sentence and briefly summarize the petitioner's compliance and performance. A statement describing the petitioner's involvement, if any, in subsequent arrests, convictions, prosecutions since the date of the original conviction must be included. Updated record checks or other relevant documents should be obtained and attached to the report. If it is determined that subsequent offenses and/or Court

- involvement has occurred, all relevant documents should be obtained and a brief synopsis included.
- c. Biographical Statement:
The investigating PPO should provide current biographical information with a focus on updating the Commissioner on significant areas to include residence, marital status, employment, education or any other significant events that have occurred since the original conviction. The petitioner's reasons for requesting the pardon should be included as well as any objections to the petition from the police, County Attorney, or Attorney General's Office.
 - d. Assessment
The PPO should summarize the relevant issues in the petition and assess the petition and the petitioner's stability and level of functioning since the conviction. Issues relative to public safety should be given primary consideration.
 - e. Recommendation
The investigating PPO shall make a specific recommendation indicating whether or not the pardon should be granted. The recommendation should be based on the verification of the information put forth by the petitioner, the rationale for the petition and the PPO's professional judgment.
 - f. Sources
Clearly identify all referral sources.
 - g. Attachments (if necessary).
5. Upon completion or arrival of the suspense date, the completed investigation shall be reviewed by the Chief PPO for completeness, accuracy, etc. and forwarded to the Office of the Director.
 6. The Director shall review the investigation and submit a brief recommendation along with the completed report to the Commissioner's Office.
 7. The Commissioner will review and forward to the Executive Council. A copy of the report shall also be forwarded to the prosecuting attorney.

REFERENCES:

Standards for the Administration of Correctional Agencies
Second Edition. Standards

Standards for Adult Correctional Institutions
Third Edition. Standards

Standards for Adult Community Residential Services
Fourth Edition. Standards

Standards for Adult Probation and Parole Field Services
Third Edition. Standards

Other

RSA 651:5 & RSA 4:22

BLAISDELL/pf

Attachments

§ 651:5. Annulment of Criminal Records.

I. Except as provided in paragraphs V-VIII, the record of arrest, conviction and sentence of any person may be annulled by the sentencing court at any time in response to a petition for annulment which is timely brought in accordance with the provisions of this section if in the opinion of the court, after hearing, the annulment will assist in the petitioner's rehabilitation and will be consistent with the public welfare.

II. Any person whose arrest has resulted in a finding of not guilty, or whose case was dismissed, or not prosecuted, may petition for annulment of the arrest record at any time in accordance with the provisions of this section.

III. Except as provided in RSA 265:82-c or in paragraphs V and VI, any person convicted of an offense may petition for annulment of the record of arrest, conviction and sentence when the petitioner has completed all terms and conditions of the sentence and has thereafter been convicted of no other crime, except a motor vehicle offense classified as a violation other than driving while intoxicated under RSA 265:82, for a period of time as follows:

- (a) For a violation, one year
- (b) For a class B misdemeanor except as provided in subparagraph (f), 3 years
- (c) For a class A misdemeanor except as provided in subparagraph (f), 3 years
- (d) For a class B felony excepted as provided in subparagraph (g), 5 years
- (e) For a class A felony, 10 years
- (f) For sexual assault under RSA 632-A:4, 10 years
- (g) For felony indecent exposure or lewdness under RSA 645:I, II, 10 years

IV. If a petition for annulment is denied, no further petition shall be brought more frequently than every 3 years thereafter.

V. No petition shall be brought and no annulment granted in the case of any violent crime, of any crime of obstruction of justice or of any offense for which the petitioner was sentenced to an extended term of imprisonment under RSA 651:6.

VI. If a person has been convicted of more than one offense, no petition for annulment shall be brought and no annulment granted:

- (a) If annulment of any part of the record is barred under paragraph V; or
- (b) Until the time requirements under paragraphs III and IV for all offenses of record have been met.

VII. If, prior to disposition by the court of a petition for annulment, the petitioner is charged with an offense conviction for which would bar such annulment under paragraph V or VI(a) or would extend the time requirements under paragraphs III, IV and VI(b), the petition shall not be acted upon until the charge is disposed.

VIII. Any petition for annulment which does not meet the requirements of paragraphs III-VI shall be dismissed without a hearing.

IX. When a petition for annulment is timely brought, the court shall require the department of corrections to report to the court concerning any state or federal convictions, arrests or prosecutions of the petitioner and any other information which the court believes may aid in making a determination on the petition. The department shall charge the petitioner a fee of \$100 to cover the cost of such investigation unless the petitioner demonstrates that he is indigent or he has been found not guilty or his case has been dismissed or not prosecuted in accordance with paragraph II. The court shall provide a copy of the petition to the prosecutor of the underlying offense and permit them to be heard regarding the interest of justice in regard to the petition.

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X. Upon entry of an order of annulment:

(a) The person whose record is annulled shall be treated in all respect as if he had never been arrested, convicted or sentenced, except that, upon conviction of any crime committed after the order of annulment has been entered, the prior conviction may be considered by the court in determining the sentence to be imposed and may be counted toward habitual offender status under RSA 259:39.

(b) The court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction and sentence and shall notify the state police criminal records unit and the arresting agency.

(c) In any application for employment, license or other civil rights or privileges, or in any appearance as a witness in any proceeding or hearing, a person may be questioned about a previous criminal record only in terms such as "Have you ever been arrested for or convicted of a crime that has not been annulled by a court?"

XI. Nothing in this section shall affect any right:

(a) Of the person whose record has been annulled to appeal from the conviction or sentence or to rely on it in bar of any subsequent proceedings for the same offense; or

(b) Of law enforcement officers to maintain arrest and conviction records and to communicate information regarding the annulled record of arrest or conviction to other law enforcement officers for legitimate investigative purposes or in defense of any civil suit arising out of the facts of the arrest, or to the police standards and training council solely for the purpose of assisting the council in determining the fitness of an individual to serve as a law enforcement officer, in any of which cases such information shall not be disclosed to any other person.

XII. A person is guilty of a misdemeanor if, during the life of another who has had a record of arrest or conviction annulled pursuant to this section, he discloses or communicates the existence of such record except as provided in subparagraph XI(b).

XIII. As used in this section, "violent crime" means:

(a) Capital murder, first or second degree murder, manslaughter, or class A felony negligent homicide under RSA 630

(b) First degree assault under RSA 631:1

(c) Aggravated felonious sexual assault or felonious sexual assault under RSA 632-A

(d) Kidnapping or criminal restraint under RSA 633

(e) Class A felony arson under RSA 634:1

(f) Robbery under RSA 636

(g) Incest under RSA 639:2, or endangering the welfare of a child by solicitation under RSA 639:3, III

(h) Any felonious child pornography under RSA 649-A

XIV. As used in this section, "crime of obstruction of justice" means:

(a) Tampering with witnesses or informants under RSA 641:5 or falsifying evidence under RSA 641:6

(b) Any felonious offense of obstructing governmental operations under RSA 642.

History

Source, 1971, 518:1, 205:2, 1986, 49:1. 1988, 238:6. 1991, 159:1. 1992, 269:11. 1994, 224:1, eff. Jan. 1, 1995.

Amendments – 1994. Amended section generally

- 1992. Paragraph XVI: Added

- 1991. Paragraph V: Deleted "or district court probation officer" following "corrections" in the first sentence and added the second sentence.

- 1988. Paragraph XV: Rewrote the first sentence and added the second sentence

- 1986. Chapter 49 amended the section generally.

Chapter 189 reenacted the section without change

- 1985. Paragraph XI: Added.

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Applicability of 1994 amendment. 1994, 224:2, eff. Jan. 1, 1995 provided: "The provisions of section 1 of this act [which amended this section] shall apply in the case of any petition for annulment brought after the effective date of this act [Jan. 1, 1995], except that any person convicted of a misdemeanor before the effective date of this act shall have the option of applying for annulment under the laws in effect at the time of sentencing."

Applicability of 1992 amendment. 1992, 269:21, eff. July 1, 1992, provided that the amendment to this section by 1992, 269:11, shall apply to all offenses committed on or after July 1, 1992.

Cross references. Annulment of record of conviction for driving or attempting to drive while under the influence of intoxicating liquor or controlled drug, see RSA 265:82-c.

Annulment of record of conviction for possession of controlled drug, see RSA 318-B:28-a.

Classification of crimes. See RSA 625:9.

Sentences, see RSA 651.

§ 4:22. Commissioner of corrections to Report on.

In all cases where the petition is for the pardon of a person serving a sentence in the state prison, the commissioner of corrections shall make a report upon the petition before it is referred to the council.

Name
Address
City, State, Zip

RE: Annulment Petition – (NAME)
(Court Name) – (Docket Number)

Dear

The above referenced Court has referred your petition for annulment of arrest and/or conviction record to our office for an investigation, report and recommendation. Toward that end, you are required to provide the information solicited in the questionnaire sent with this letter. Each question must be answered honestly and as informatively as possible. Please feel free to include letters of reference or any other documentation you believe is relevant.

RSA 651:5, IX requires that the New Hampshire Department of Corrections assess a \$100.00 annulment investigation fee. The fee must be paid in full prior to the commencement of the investigation. Partial payments can not be accepted. If you are indigent and can not afford the fee, you will need to arrange an appointment with me to review your financial status and substantiate your claim. You may contact me at XXX-XXXX to make such arrangements. Payment should be made to the NHDOC and forwarded to Division of Field Services, XXXXXX

The fee and completed questionnaire must be returned to this office within 14 days of the date of this letter. Your timely attention to this matter is essential. If you have any questions, please contact me at (603) XXX-XXXX

Sincerely,

Encl.

NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS

ANNULMENT INVESTIGATION

COURT:

DOCKET #(S):

NAME: D.O.B.:

OFFENSE(S):

DATE OF OFFENSE(S):

PLEA:

DATE OF CONVICTION:

SENTENCING JUDGE:

DISPOSITION:

RECORD CHECKS: (SEE ATTACHED)

N.H. MOTOR VEHICLE:

N.H. CRIMINAL:

OTHER:

COMPLIANCE WITH COURT ORDERED CONDITIONS: YES NO

COMPLIANCE WITH NEW HAMPSHIRE RSA 651:5: YES NO

EXPLANATION (IF ANY):

RECOMMENDATION TO ANNUL: YES NO

DATE

PROBATION/PAROLE OFFICE

Dear

The above captioned has petitioned for annulment of conviction. The attached two requests for information were sent petitioner who has failed to respond, nor has petitioner paid the \$100.00 annulment fee as required by RSA 651:5.

Therefore it is recommended petitioner's request be denied without prejudice.

Sincerely,